

No. 6035

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

W.M. I. BETTIS and PATTERSON-BALLAGH COR-
PORATION (a corporation),

Appellants,

vs.

PARAGON RUBBER PRODUCTS COMPANY (a corpo-
ration), CALIFORNIA MANUFACTURING & EN-
GINEERING COMPANY (a corporation), B. F.
GOODRICH COMPANY (a corporation), and
ROTARY SUPPLY COMPANY (a corporation),

Defendants.

CALIFORNIA MANUFACTURING & ENGINEERING
COMPANY,

Appellee.

APPELLANTS' REPLY BRIEF.

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CALIFORNIA MANUFACTURING & ENGINEERING COMPANY,

Appellee.

APPELLANTS' REPLY BRIEF.

This brief is filed pursuant to permission granted on the argument.

We believe that not much remains to be said in addition to what has already been set forth on our opening brief and on argument. There are a few matters which developed on argument and upon inspection of appellees' brief, which deserve concise treatment.

In the first place, we know that your Honors will recognize the principle of patent law that invention often concerns the *underlying idea* rather than the specific embodiment of such idea, and that such embodiment may be widely varied and the inventive idea still pervade the variants. Materials and mechanical parts and elements are in general old, and the selection and association and combination of the same in proper embodiment of the *idea* may be widely varied without departing from the invention. The present invention may or may not in practice concern one particular act of combining the reactive element, the protector itself, with the string of drill pipe. Claim 5 is for the effected and effective *combination*. The ultimate combination of the elements and features used in practicing the invention is the big thing to be considered with respect to the Bettis and Perry invention. This big thing is particularly set forth in Claim 5. We submit that the defendants' device in this case, in its combination with drill pipe, constitutes a true species of the broad invention stated in that claim. This combination was broadly new and the combination is the entity into which all of the parts and elements become merged, just like a molecule of water, which comprises two atoms of hydrogen and one of oxygen; water is neither hydrogen nor oxygen; it is a new entity. This is the clearly established law of patents in such behalf.

The prior art discloses no such idea of this nature, nor does it disclose any such embodiment. The Wellington and Ryan patent stressed by appellee as the principal prior art, is totally out of the question,

either as a suggestion of the Bettis and Perry patent idea or as an embodiment thereof. In the first place, the thing set forth therein is a pump having a pump shaft to operate a fixedly mounted pump in a shallow water well. Such pumps are used in wells a few hundred feet deep. This *pump* has nothing to do with *drilling* a deep oil well by means of a string of drill pipe pendant in the well hole and having a bit at its lower end, the whole string banging and milling about and whipping in the hole, such string being jointed and constantly lowering in operation, serving as a conduit, and operated in drilling fluid with chips and drillings and detritus rising in the well hole. There is no similarity or analogy between such an organization and a little short pump shaft. Wellington and Ryan teach the pinning of plates to shafting and the holding of a body between such plates. The pins have to pass through the shaft. It would be impossible to ship drill pipe to the oil fields with any such pinned plates on the pipe. They would knock off, or at least become bent and displaced. Certainly drillers would not attempt to apply such plates in the oil field. The pipe would work loose, and pipe leakage would occur under the heavy pump pressures. It would be necessary to take off the collars and tool joints to put the plates on or replace them. This would have to be done in the field if any devices were attempted to be put on the pipe before use. No driller would attempt it. The pins would impede flow of drilling fluid down through the drill pipe. The use of these pins would make it impossible to lower an acid bottle for testing the trend of the hole

being developed away from the vertical. The use of these plates and pins would make it very difficult to use fishing tools in the hole. The Wellington and Ryan device is used in *pumping water* in a shallow well already drilled and drilled by an entirely different method, and the Bettis and Perry device is used in *drilling deep oil* wells. The specially fitted plates on the Wellington and Ryan short pump shaft could not be used on oil well drill pipe, and *do not* suggest the idea or embodiment of the Bettis and Perry invention. If these parts pinned to the Wellington and Ryan pump shaft were lost in the hole, it would require a fishing or drilling job to get them out. The Wellington and Ryan patent did not suggest the anti-friction tool joint device, and neither the latter nor the former suggested the Bettis and Perry invention. Appellee uses neither, but *does* utilize the Bettis and Perry invention. The art was at a loss to prevent the damage and losses and wastes incident to oil well drilling, until Bettis and Perry invented the entity which the art seized upon with avidity, and for the use of which invention it has gladly paid tribute to the owner and licensees of the patent in suit. Citation of Wellington and Ryan is *proof* of invention by Bettis and Perry.

Anyone who had suggested using the frail fabric of rubber thousands of feet down a well hole, subject to the great stresses and blows incident to drilling, with the enormous power applied to the whipping drill pipe, would have been laughed to scorn. Bettis and Perry boldly utilized rubber as a preferred material in their new combination, and (to others) un-

expected success resulted. The moment the device was put on the market seriously, namely by the appellant corporation, it ran through the oil well fields of the world like wildfire. It is to be found in every field the world over and is purchased repeatedly.

Bettis and Perry devised a combination, as of Claim 5 which, as the record clearly shows, reorganized deep oil well drilling essentially, providing a combined drilling string and resilient gripping member, the latter to be applied to the drill pipe *as is* and without attaching any fastening devices to the pipe such, for example, as are disclosed in the Wellington and Ryan patent on the short pump shaft. And the old drilling string was converted into a *reacting* organization, so that a whipping approach of the drill pipe or couplings or collars or tool joints toward the casing was effectively reckoned with, and destructive results anticipated and prevented, and a vast saving in couplings, tool joints and casing resulted. Also the damage and impairment of casing and puncturing of the same was prevented and well holes thus saved from flooding by water-bearing strata in the well wall. Such flooding previously required pulling of casing and setting of new casing, and at times abandonment and loss of the expensively drilled hole. The utilization of rubber, admirably lubricated by the drilling fluid, lowers friction in the contact of the protector with the casing, while the drill pipe and protector are being rotated in drilling, and the rubber likewise opposes penetration by chips and cuttings and sand and other foreign materials. Great length of life attaches to the use of such react-

ing protective drilling string with its protector, and such drilling strings can be used over and over in successive drilling operations, as was not previously possible. A new entity was provided by Bettis and Perry, with amazing results—great saving—reduction of required power—increase of speed and provision of an undreamed-of safety factor. The invention was simple, (a merit rather than a demerit), the beneficial results were extensive and substantial, and a new era of drilling brought in. Bettis and Perry added vastly to the knowledge of mankind; and the patent owner and his licensee should be permitted to receive the tribute from the well drilling art which it has gladly paid for the use of this invention which in turn revamped well drilling machinery and its use and operation. The oil well drilling industry can not operate effectively, safely and efficiently without this invention.

Appellee most inaptly relies heavily on the *Rubber Tip Pencil* case. This case is utterly not in point, as it has to do with a mere article of manufacture. A pencil does not in any sense suggest a drilling string. The rubber tip had nothing to do with *reactive* performance. Nobody would put a pencil into a well hole. A pencil with a rubber tip doesn't suggest any machine or machine use. There was no *mechanical* combinative entity in any such thing. This out-of-place authority is entirely disposed of by the later decision of the Supreme Court in *Reckendorfer v. Faber*, cited in our opening brief.

Neither the Wellington and Ryan patent nor a rubber tipped pencil have anything to do with a

drilling machine including a drilling string made up of pendant, whipping, jointed drill pipe serving as a conduit, and organized to include a reacting protector element: the whole having a drill bit at the lower end, and rotating in a hole filled with mud—laden fluid and cuttings.

APPELLEES' BRIEF.

Appellees' brief does not follow the rules of this Court, making no reference to any testimony to support the loose assertions contained therein.

The appellee speaks of the Sherwood patent. This relates to conventional shafting for machine purposes. It was not cited by the Patent Office any more than was the Wellington and Ryan patent. It is totally wide of the mark, and both these patents emphasize the invention of the Bettis and Perry patent, rather than the contrary.

Appellees' brief perverts the plain sense of the Bettis and Perry patent and its invention, in which the *resilience* entering into the reactive action of the protector is the main function of such resilience. They wrongly say the main function is the holding of the device on the pipe. That function is only *secondary*. Claim 5 merely requires a *gripping* action.

The case of *Hyde v. Minerals Separation, Ltd., et al.*, cited on page 6, was reversed by the Supreme Court, with direct reference to the point involved, as we understand it.

INFRINGEMENT.

Claim 5 only calls for a combination with a reactive element *gripping* the drill pipe, together with various nicely balanced relations and qualities of elements entering into an embodiment of the invention. The appellees' cushioning device is conceded to *grip* the drill pipe. There is no doubt but what it grips the drill pipe, because it must do so to hold itself in place. There are no fastenings on the pipe to hold it in place. It is held in place by the inherent characteristics of the device. In this it satisfies one of the many objects mentioned in the patent. The use of the invention for any purpose, we have pointed out, constitutes an infringement, and we have cited the law of this Court to that effect. But *all* of the objects stated in the patent are obtained by appellee's device, although not necessary for infringement. Obtaining same *result* in use is enough. There is a gripping because there is a complete balance of forces holding the appellees' device in place on the pipe, just as there is a balance of forces holding the appellants' device on the pipe.

A device is used to emplace the appellants' device on the pipe, and a device is used to do the same thing with the appellees' device, the wedges or shims being driven into place. Force is used in either case. When the shims or wedges are put into place, there *must* be a resilience of the metallic portions incorporated in the appellees' device, and Stokes, who testified as expert for the appellee, so said, Tr. 171:

“When you ask if I concede that those metallic portions must have some spring in them, I reply that every metal has some spring in it.”

He also said, same page:

“It is true, of course, that you have to exert a considerable wedging action to get the slips into their final position.”

The slips or shims must be held in by the squeeze of the appellees' resilient ring; and a slight yield of the ring, or its distortion due to its spring quality or to resilience, must occur, or the shims or wedges could not be driven into place or stay in place. A squeezing stress or pressure is thus set up. Gripping of the pipe occurs. Nothing else is possible. Expert Farnsworth says, Tr. 104:

“In answer to your question as to whether there is anything about it that would hold it in place there in any other way than by gripping the pipe, I will state that it has got to grip the pipe.”

He is referring to appellees' device. At any rate, the *primary* function of the resilient ring of the defendant is to produce a reactive effect through the action of the mass of rubber which is continuous in effect when the protector is in place. The device holds itself in place without the provision of any mechanical fastenings on the pipe. The pipe is merely built up by the shims so that a squeeze takes place between it and the protector, in turn holding the shims in place. Appellee uses the whole combination of Claim 5, with all its advantages.

The invention is of great importance. No one had it until Bettis and Perry created it. The appellee did not put out its device until after the Bettis and Perry device was established in the field. It performs the same functions and obtains the same re-

sults in substantially the same manner, and enters the same operative combination; utilizing merely obvious changes or additions which are not even clever or ingenious in nature. The substance of the Bettis and Perry invention is partaken of.

The Courts have always aimed to construe patents to fit the real invention disclosed, and to sustain patents for meritorious inventions which have improved conditions in the arts concerned. Likewise, they have uniformly enjoined unauthorized use of such patented inventions. We submit that to such ends the decree of the lower Court should be reversed and the cause remanded with instructions to grant the relief prayed for in the bill of complaint.

Dated, Los Angeles,
May 17, 1930.

Respectfully submitted,
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